

to be discounted and subsidized by funds drawn from telecommunications carriers' support obligations. See §§ 254(c)(1), (c)(3), (h)(1). Section 254(h)(2)(A) provides merely that the Commission should adopt rules to "enhance . . . access" to advanced services. Section 254(h)(2) does not otherwise expand the Commission's statutory license to apply the USF -- which is funded solely by telecommunications carriers -- to subsidize services other than telecommunications services. For this reason, the Board's recommendation is also not "competitively neutral." Telecommunications carriers are the only firms that contribute to the USF, but large portions of the subsidies for Internet access and inside wiring would flow to firms that are not telecommunications carriers.

Moreover, the Board's proposals would dramatically increase the size of the USF and therefore appear not to be "economically reasonable." Internet access¹⁴ and inside wiring could account for approximately half of the \$2.25 billion fund for schools and libraries alone. The inclusion of subsidies that will increase USF requirements by this magnitude could threaten public support for the entire system. Removing the proposed subsidies for Internet access and inside wiring from the USF, in contrast, would reduce the amount necessary to fund discounts for schools and libraries to about \$1 billion per year. That figure is much more

¹⁴ With respect to Internet access, the Board's statutory analysis also rests in part on the incorrect factual premise that attempts to "disaggregate the network transmission component of Internet access from the information service component" would be unworkable or would undermine competition in the Internet access market. RD at ¶ 462. To the contrary, the "network transmission component" and the "information services component" are already disaggregated in the market itself. Consumers typically pay separately, often to different a firm, for the transmission link used for Internet access. This transmission link -- like other telecommunications services -- would be within the permissible scope of USF funding.

realistic and manageable, especially in light of the need to maintain public support for universal service.

2. The Commission Should Establish An Annual Per-Institution Cap In Addition To A Total Cap On Spending For Schools And Libraries.

These measures should be complemented by additional steps to control the overall size of the subsidy flowing to schools and libraries. For example, the Joint Board recommends that the Commission establish an annual cap on spending from the USF for schools and libraries of \$2.25 billion. RD at ¶ 556. While that cap is far too high for the reasons discussed above, AT&T strongly endorses the Board's proposal of an overall spending cap.

Equally important, the Commission should establish a per-institution cap in addition to the overall cap. A per-institution cap is necessary to ensure the equitable distribution of subsidies. Without such a cap, a subset of eligible institutions could exhaust the fund and leave the remaining institutions without any support. Indeed, without a per-institution cap, the system would confer an arbitrary advantage on institutions that were better organized or those that simply acted earlier in the funding year.

As a necessary complement to the rule requiring per-institution caps, each eligible institution should be required to obtain certification from the USF of its eligibility. The Commission should also consider allowing the specific per-institution cap to vary as a function of various factors. For example, the cap for schools might vary with the number of students, or as a function of the size of the discount to which it is entitled.

3. The Commission Should Permit Schools And Libraries To Form Consortia Only With Other Eligible Schools And Libraries And With Municipalities.

Finally, if the overall subsidy to schools and libraries is to be kept within reasonable bounds, the Commission can and must place some restrictions on the ability of these entities to form consortia with other entities. The Joint Board recommends allowing schools and libraries to form buying consortia with other educational institutions, "including colleges, universities, educational broadcasters, community free nets, and municipalities," for the purpose of allowing these institutions to aggregate their traffic to receive "lower pre-discount rates, thereby diminishing both their costs and the amount of support required to support a given percentage discount." RD at ¶ 594. The Board also recommends requiring such consortia to maintain accounting records of the allocation of each member's telecommunications costs, so that the discounts can be made available only to those members of the consortia that are eligible for the discounts. See RD at ¶¶ 595-96; see also § 254(h)(4) (prohibiting the resale of services obtained at a discounts under § 254(h)).

The Commission, however, should limit the permissible consortia to those including eligible schools, eligible libraries, and municipalities. Consortia create an enormous potential for abuse and for circumvention of Section 254(h)(4)'s prohibition on resale of discounted services. In addition, policing these allocation requirements will significantly increase enforcement and auditing costs. Indeed, allowing such consortia would put the fund administrator, the Commission, and the state commissions in the position of auditing virtually every school and library in the country.

Therefore, the Commission should strictly limit the ability of non-eligible institutions to join such consortia to municipalities. AT&T recognizes the value of allowing eligible entities and municipalities to aggregate their traffic to obtain lower pre-discount rates. Limiting the permissible range of consortia, however, will curtail to some degree the potential for abuse and reduce the necessary administrative cost of enforcing these requirements.

C. The Commission Should Generally Adopt The Joint Board's Proposals Concerning Subsidies For Rural Health Care Providers.

The Commission should also take certain modest steps to control the overall level of subsidies provided to rural health care providers.

With respect to the range of services that should be subsidized, AT&T suggests a two-tiered approach. Rural primary care providers (e.g., community and migrant health providers and rural health clinics) should receive access to telecommunications services up to ISDN (64-128 kbps) or similar technology. Such services would permit rural primary care providers to transmit high quality resolution still images or "packaged video" to larger institutions for evaluation in a timely manner, while also supporting other activities such as the transmission of medical information.

Rural hospitals providing secondary care and above, however, should receive access to a level of service consistent with T1 throughput (1.54 Mbps). Such connections would support real-time interactive video for complex medical applications that require consultations with major urban centers. Only T1 capability provides acceptable motion quality and the flexibility to send or receive real-time motion video and voice among multiple sites, as well

as providing data transfer capability in a timely manner consistent with the needs of a higher volume, larger health care provider.

In all events, the Commission should recognize that, as is the case with schools and libraries, the Act permits subsidies from the USF only for "telecommunications services," not enhanced services. See § 254(h)(1)(A); see also Section II.B, supra.¹⁵

As to rates, the Act specifies that telecommunications services must be provided at "rates that are reasonably comparable to rates charged for similar services in urban areas in that state," and that if such rates are lower than the prevailing rate in the relevant rural area, the carrier can be reimbursed from the USF. § 254(h)(1)(A). AT&T agrees with the Joint Board that the "urban rate" should be based on the highest commercial rate tariffed or publicly available in the nearest urban area within that state (see RD at ¶¶ 667-68), and that the "rural rate" should be based on the average of the "rates actually being charged to customers, other than health care providers [or schools or libraries], for identical or technically similar services provided by the carrier . . . to commercial customers in [that] rural county." RD at ¶ 680. The Commission should further specify that, if that carrier does not offer the same or technically similar services in that rural county, the carrier should be reimbursed the difference between the urban rate and what a cost-based rate for provision of the service in the most economically efficient, reasonably available manner would be in that rural area.

¹⁵ The Commission should also clarify by rule that rural health care providers are eligible to receive subsidies only for their administrative networks -- i.e., the networks used to deliver patient care -- and not the alternative network used to provide telecommunications services to patients in their rooms.

The Commission should also establish a cap on overall spending for subsidies for rural health care providers, as the Board recommended for schools and libraries. It should also establish a per-institution cap. As explained above, such caps are necessary to control the size of the overall subsidy, and to ensure that the amounts available for subsidies are distributed equitably. For the same reasons, these institutions should also be prohibited from reselling any telecommunications services to others.

The Commission must also establish clear rules specifying which institutions qualify as rural health care providers. First, AT&T endorses the Joint Board's recommendation that only providers that are physically located in rural areas should qualify for subsidies. RD at ¶¶ 702-03. AT&T also agrees with the Board that the plain terms of the Act limit the eligible recipients to "public or nonprofit" health care providers, and therefore for-profit solo practitioners and clinics operating in rural areas are not eligible for subsidized rates. RD at ¶¶ 710-12. AT&T also generally endorses the Board's suggestion that rural areas should be defined as the Office of Management and Budget's (OMB) list of non-metropolitan counties, plus the "Goldsmith Modification's" list of non-urban areas within the OMB's metropolitan counties. RD at ¶¶ 690, 693-94. The Commission should also require, as with schools and libraries, that rural health care providers obtain certification from the USF administrator of their eligibility to receive subsidized rates.

Finally, the Commission should reject the Advisory Committee's suggestion that funds from the USF should be used to build or upgrade the public switched network or "backbone infrastructure" required for rural telemedicine. As explained above, Section 254(h)(2) does not permit the Commission to expand the USF for the purpose of funding activities that are

not "telecommunications services." Moreover, universal service funding for upgrading the public switched network would not be "competitively neutral," as Section 254(h)(2) requires. Any such subsidy would necessarily require non-LEC carriers to pay for valuable, permanent upgrades to certain LECs' facilities. Such upgrades would benefit those LECs in all aspects of their provision of service, not just telemedicine, and would thus bestow substantial competitive advantages on those LECs. The Commission should leave upgrades of the network to market forces.

III. THE COMMISSION SHOULD MAKE CERTAIN ADDITIONAL CHANGES TO ENSURE THE SOUND ADMINISTRATION OF THE UNIVERSAL SERVICE FUND.

To achieve the goals articulated by Congress and the Commission, certain steps must also be taken to ensure the sound administration of the new universal service subsidy scheme.

A. The Commission Should Establish A Neutral Administrator To Oversee The Universal Service Fund.

First, the Commission should adopt the Joint Board's recommendation "that the Commission appoint a universal service advisory board to designate a neutral, third-party administrator" for the Universal Service Fund. RD at ¶ 829. Moreover, the Board correctly concluded that NECA as currently constituted should not be appointed to administer the USF. RD at ¶ 832. Under the new universal service system required by the Act -- in which all telecommunications carriers contribute to the USF and potentially receive subsidies from the USF within a competitive environment -- it is vitally important that the administrator of the USF be completely neutral. As the Joint Board properly recognizes, NECA -- whose Board of Directors is "composed primarily of representatives of incumbent local exchange carriers"

and which has an institutional history of taking advocacy positions favorable to incumbent LECs -- is not such an entity. RD at ¶ 832. Moreover, the Commission (or the proposed universal service advisory board) can find any number of good alternatives to NECA, such as Bellcore (now divested from the BOCs) or a private accounting or other firm that specializes in the management of complex compensation systems (like Lockheed Martin IMS). Success of the universal service program can only be achieved if all participants have confidence in the neutrality of the universal service administrator.

B. The Commission Should Adopt The Joint Board's Proposals Concerning Rural Carriers, But Should Also Institute A Certification Requirement For Those Carriers.

Second, the Commission should adopt a modified version of the Joint Board's proposals with regard to rural carriers. The Joint Board "recommend[ed] that the Commission define 'rural' as those carriers that meet the statutory definition of a 'rural telephone company.'" RD at ¶ 287. The Board did not, however, recommend a procedure sufficient to ensure that carriers qualify for this special status or that they receive the proper level of universal service assistance. Indeed, carriers need only "notify the Commission and the state commissions that for purposes of universal service support determinations they meet the definition of a 'rural telephone company. . . ." Id.

Without a thorough verification process, such a voluntary compliance system would be unacceptably prone to abuse, and therefore the Commission should establish a formal carrier certification process. Certification would begin with notification by the applicant to the federal and state commissions. Next, other interested parties would have the opportunity to respond. If the Commission were satisfied that the carrier has met the statutory definition

of "rural carrier," then it would issue an order granting the carrier this special status for purposes of support from the USF. In addition, this process should be automatically reopened if a rural carrier enters into a merger or acquisition. Only through such a formal certification process can the Commission guarantee compliance with the Act as well as the proper level of USF support.

C. The New Universal Service Rules Should Not Take Effect Before The Commission Has Completed Its Access Reform Proceedings.

Finally, the new universal service rules should not take effect before the Commission has completed its access reform proceedings. The need for reform of the universal service system is intimately bound up with the need for reform of the Commission's rules concerning access charges. The current access charge regime allows LECs to collect access charges that are substantially above cost and which function as subsidies. The imposition of new universal service obligations on interexchange carriers while the existing access charge regime remains in place, therefore, would simply exacerbate the inefficiencies and competitive disadvantages that are inherent in the present system.

The Joint Board recommended that subsidies for schools and libraries be available immediately upon the effective date of the rules, so that schools could take advantage of them for the 1997-98 school year. AT&T agrees with that proposal, provided that access reform is implemented at the same time.¹⁶ Requiring carriers to bear the associated universal service payment obligations -- which are entirely new obligations over and above existing universal


¹⁶ This should give the Commission sufficient time to select a new USF administrator, thus obviating the need to have an interim administrator establish makeshift mechanisms to administer the new school, library and rural health care provider subsidies.

service support -- before the Commission has reformed the access charge regime would create serious competitive distortions and should be avoided. Therefore, the new universal service system should take effect all at once, on the first practical date after the completion of access reform.

CONCLUSION

The Commission should adopt the Joint Board's recommendations for implementation of the universal service provisions of the Act, with the modifications described above.

Respectfully submitted,


Mark C. Rosenblum
Peter H. Jacoby
Judy Sello

Room 3244J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Gene C. Schaerr
James P. Young
Scott Bohannon

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

December 19, 1996

CERTIFICATE OF SERVICE

I, James P. Young, do hereby certify that a true copy of the foregoing Comments of AT&T Corp. was served this 19th day of December, 1996, by United States mail, first class, postage prepaid, upon the parties listed on the attached Service List.

James P. Young
James P. Young

SERVICE LIST
(CC Docket 96-45)

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M St., NW -- Rm. 814
Washington, DC 20554

The Honorable Rachelle B. Chong, Commissioner
Federal Communications Commission
1919 M St., NW -- Rm. 844
Washington, DC 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M St., NW -- Rm. 832
Washington, DC 20554

The Honorable Julia Johnson, Commissioner
Florida Public Service Commission
Gerald Gunter Bldg.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure, Commissioner
Missouri Public Service Commission
301 W. High St., Suite 530
Jefferson City, MO 65101

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol St.
Pierre, SD 57501-5070

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Boehley
Federal Communications Commission
2100 M St., NW, Room 8605
Washington, DC 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol St.
Pierre, SD 57501-5070

Deonne Bruning
Nebraska Public Utilities Commission
300 The Atrium
1200 N St.
P.O. Box 94927
Lincoln, NE 68509-4927

James Casserly
Federal Communications Commission
Office of Commissioner Ness
1919 M St., Rm. 832
Washington, DC 20554

John Clark
Federal Communications Commission
2100 M St., NW, Rm. 8619
Washington, DC 20554

Bryan Clopton
Federal Communications Commission
2100 M St., NW, Rm. 8615
Washington, DC 20554

Irene Flannery
Federal Communications Commission
2100 M St., NW, Rm. 8922
Washington, DC 20554

Daniel Gonzalez
Federal Communications Commission
Office of Commissioner Chong
1919 M St., NW, Rm. 844
Washington, DC 20554

Emily Hoffnar
Federal Communications Commission
2100 M St., NW, Rm. 8623
Washington, DC 20554

L. Charles Keller
Federal Communications Commission
2100 M St., NW, Rm. 8918
Washington, DC 20554

Lori Kenyon
Alaska Public Utilities Commission
1016 W. Sixth Ave., Suite 400
Anchorage, AK 99501

David Krech
Federal Communications Commission
2025 M St., NW, Rm. 7130
Washington, DC 20554

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Diane Law
Federal Communications Commission
2100 M St., NW, Room 8920
Washington, DC 20554

Mark Long
Florida Public Service Commission
Gerald Gunter Bldg.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Robert Loube
Federal Communications Commission
2100 M St., NW, Rm. 8914
Washington, DC 20554

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Bldg.
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th St., NW -- Suite 500
Washington, DC 20005

Tejal Mehta
Federal Communications Commission
2100 M St, NW, Rm. 8625
Washington, DC 20554

Terry Monroe
New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

John Morabito
Deputy Div. Chief, Acctg. & Audits
Common Carrier Bureau
Federal Communications Commission
2000 L St., NW, Suite 812
Washington, DC 20554

Mark Nadel
Federal Communications Commission
2100 M St., NW, Rm. 8916
Washington, DC 20554

John Nakahata
Federal Communications Commission
Office of Chairman
1919 M St., NW, Rm. 814
Washington, DC 20554

Lee Palagyi
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Dr., SW
Olympia, WA 98504

Kimberly Parker
Federal Communications Commission
2100 M St., NW, Rm. 8609
Washington, DC 20554

Barry Payne
Indiana Office of the Consumer Counsel
100 N. Senate Ave., Rm. N501
Indianapolis, IN 46204-2208

Jeanine Poltronieri
Federal Communications Commission
2100 M St., NW, Rm. 8924
Washington, DC 20554

James Bradford Ramsay
National Assn. of Regulatory Utility Commissioners
P.O. Box 684
Washington, DC 20044-0684

Brian Roberts
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Gary Seigel
Federal Communications Commission
2000 L St., NW, Suite 812
Washington, DC 20554

Richard Smith
Federal Communications Commission
2100 M St., Rm. 8605
Washington, DC 20554

Pamela Szymczak
Federal Communications Commission
2100 M St., Rm. 8912
Washington, DC 20554

Lori Wright
Federal Communications Commission
2100 M St., NW, Rm. 8603
Washington, DC 20554